

This record is a partial extract of the original cable. The full text of the original cable is not available.

UNCLAS SECTION 01 OF 05 TEGUCIGALPA 002816

SIPDIS

STATE for INL and WHA/CEN
Justice for OIA and AFMLS
Treasury for FinCEN

E.O. 12958: N/A

TAGS: [KCRM](#) [KTFN](#) [KJUS](#) [ECON](#) [PGOV](#) [PREL](#) [HO](#)

SUBJECT: HONDURAS: 2004-2005 INCSR PART II, MONEY LAUNDERING AND FINANCIAL CRIMES.

REF: State 254401

1. Post provides its submission for the 2004-2005 International Narcotics Control Strategy Report (INCSR) Part II, Money Laundering And Financial Crimes.

Introduction and General Questions

Two years after passing a new law against money laundering, the government of Honduras has made considerable progress in implementing the law, establishing and training the entities responsible for the investigation of financial crimes, and improving cooperation among these entities. In 2004, these efforts began to pay off, with 16 money laundering-related arrests, seizure of over \$6 million worth of cash and goods, and the first five convictions for money laundering crimes in the country's history. Sustained progress will depend upon increased commitment from the government of Honduras to prosecute financial crimes aggressively.

Honduras is not an important regional or offshore financial center and is not considered to have a significant black market for smuggled goods (though there have been recent high-profile smuggling cases involving gasoline and other consumer goods). Money laundering, however, does take place in Honduras, primarily through the banking sector but also through currency exchange houses and front companies as well. The vulnerabilities of Honduras to money laundering stem primarily from significant trafficking of narcotics, especially cocaine, through the region, though smuggling of contraband may also generate funds that are laundered through the banking system. Money laundering in Honduras derives from both domestic and foreign criminal activity, and the proceeds are controlled by local drug trafficking organizations and organized crime syndicates. Honduras is not experiencing an increase in financial crimes such as bank fraud. It is not a matter of government policy to encourage, facilitate or engage in laundering the proceeds from illegal drug transactions, from other serious crimes, or from terrorist financing. However, corruption remains a serious problem, particularly within the judiciary and law enforcement sectors.

Laws and Regulations to Prevent Money Laundering/Terrorist Financing

Money laundering has been a criminal offense in Honduras since 1998, when the passage of Law. No. 27-98 criminalized the laundering of narcotics-related proceeds and introduced various record keeping and reporting requirements for financial institutions. However, weaknesses in the law, including a narrow definition of money laundering, made it virtually impossible to successfully prosecute the crime.

In 2002, Honduras passed Decree No. 45-2002, which greatly strengthened its legal framework and available investigative and prosecutorial tools to fight money laundering. Under the new legislation, the definition of money laundering was expanded to include the transfer of assets that proceed directly or indirectly from trafficking of drugs, arms, human organs or people, auto theft, kidnapping, bank and other forms of financial fraud, and terrorism, as well as any sale or movement of assets that lacks economic justification. The penalty for money laundering is a prison sentence of 15-20 years. The law also requires all persons entering or leaving Honduras to declare, and if asked, present, money in cash and convertible securities ("titulos valores de convertibilidad inmediata") that they are carrying if the amount exceeds \$10,000 or its equivalent.

Decree No. 45-2002 also created a financial information unit, the Unidad de Informacion Financiera (UIF), within the Honduran National Banking and Insurance Commission. Banks and other financial institutions are required to report to the UIF any currency transactions over \$10,000 in dollar denominated accounts or 200,000 lempiras (approximately \$10,770) in local currency accounts. The law requires the UIF and reporting institutions to keep a registry of reported transactions for five years. Banks are required to know the identity of all their clients and depositors, regardless of the amount of a client's deposits, and to keep

adequate records of the information. The law also includes banker negligence provisions that make individual bankers subject to two- to five-year prison terms if, by "carelessness, negligence, inexperience or non-observance of the law, they permit money to be laundered through their institutions." All of the above requirements apply to all financial institutions that are regulated by the National Banking and Insurance Commission, which include state and private banks, savings and loan associations, bonded warehouses, stock markets, currency exchange houses, securities dealers, insurance companies, credit associations and casinos. The law does not, however, extend to the activities of lawyers or accountants.

Decree No. 45-2002 requires that a public prosecutor be assigned to the UIF. In practice, four prosecutors are assigned to the UIF, each on a part-time basis, with responsibility for specific cases divided among them depending on their expertise. The prosecutors, under urgent conditions and with special authorization, may subpoena data and information directly from financial institutions. Public prosecutors and police investigators are permitted to use electronic surveillance techniques to investigate money laundering.

Under the Criminal Procedure Code, reporting individuals such as bank officials are protected by law with respect to their cooperation with law enforcement authorities. However, some have alleged that their personal security is put at risk if the information they report leads to the prosecution of money launderers. Officials of the Public Ministry, the National Banking and Insurance Commission and the private-sector banking association AHIBA are looking into ways that testimony from bank officials could be treated differently in order to protect the identity of the bank officials.

Until this year, there had been some ambiguity in Honduran law concerning the responsibility of banks to report information to the regulating authorities and the duty of banks to keep customer information confidential. A new law passed in September 2004, the Financial System Law (Decree No. 129-2004) clarifies this ambiguity, explicitly stating that provision of information demanded by regulatory, judicial, or other legal authorities shall not be regarded as an improper divulgence of confidential information.

There have been no changes or additions to the Honduran laws governing money laundering or terrorist financing during 2004. However, four financial sector strengthening laws were passed in September, including the Financial System Law mentioned above, and reforms of the National Banking and Insurance Commission and the Central Bank. While these laws do not touch specifically on money laundering or terrorist financing, they improve the legal and operational capacity of the Honduran authorities to regulate the banking sector, and should therefore strengthen the authorities' ability to detect and counteract money laundering or terrorist financing. While some banks and political figures objected to certain parts of these laws, on the whole the laws were developed through close consultation with representatives of the banking sector, which generally supports the changes for their positive impact on greater regulatory clarity and effectiveness.

Prosecutions in 2004

Prior to 2004, there had been no successful prosecutions of money laundering crimes in Honduras. To date in 2004, however, the authorities have arrested 16 persons for money laundering crimes, issued six additional outstanding arrest warrants, and secured five convictions.

In April 2004, two Guatemalan citizens were caught crossing the border between Guatemala and Honduras carrying \$247,000 in cash, suspected to be connected to narcotics trafficking activities. The two men were brought to trial in June, and one was convicted and sentenced to 16 years in prison, while the other was found not guilty. This was the first conviction of a money laundering offense since the 2002 law had been passed.

In December 2002, the fishing vessel Capitan Ryan was seized while departing a Honduran port and found to be carrying \$467,000 in cash, believed to be connected to drug trafficking. The Hondurans on board the boat were arrested and, in June 2004, four of them were convicted of money laundering, while three others were found innocent and released. All four who were convicted are currently serving terms of 19 years in prison. The cash and other assets (including the boat) seized at the time of the arrest were ordered forfeited. Another person connected to the same case was apprehended in Panama by Panamanian authorities; his case is still being processed in the Panamanian judicial system.

In early 2004, a Honduran named Angela Platero was arrested and charged with running an illegal lottery scheme and laundering the proceeds. Honduran authorities seized approximately \$1.6 million in cash and assets in connection with this investigation. The case was due to go to court in October 2004, however defense attorneys filed a motion claiming that the seizure was unconstitutional, which has been referred to an appellate court. A denial of the motion is expected in early January 2005, in which case the case will proceed to trial in February.

Measures to Prevent Terrorist Financing

The government of Honduras has been supportive of counterterrorism efforts. Decree No. 45-2002 states that an asset transfer related to terrorism is a crime; however, terrorist financing has not been identified as a crime itself. The law does not explicitly grant the government the authority to freeze or seize terrorist assets; however, on separate authority, the National Banking and Insurance Commission has issued freeze orders promptly for the organizations and individuals named by the UN 1267 Sanctions Committee and those organizations and individuals on the list of Specially Designated Global Terrorists designated by the United States pursuant to Executive Order 13224 (on terrorist financing). The Ministry of Foreign Affairs is responsible for instructing the Commission to issue freeze orders. The Commission directs Honduran financial institutions to search for, hold, and report on terrorist-linked accounts and transactions, which, if found, would be frozen. The Commission has reported that, to date, no accounts linked to the entities or individuals on the lists have been found in the Honduran financial system.

While Honduras is a major recipient of flows of remittances (estimated at \$1.1 billion in 2004), there has been no evidence linking these remittances to the financing of terrorism. Remittances primarily flow from Hondurans living in the United States to their relatives in Honduras. Most remittances are sent through wire transfer or bank services, with some cash probably being transported physically from the United States to Honduras. There is no significant indigenous alternative remittance system such as hawala operating in Honduras, nor is there any evidence that charitable or non-profit entities in Honduras have been used as conduits for the financing of terrorism.

Honduras signed the 1999 International Convention for the Suppression of the Financing of Terrorism on November 11, 2001, and ratified the convention on March 25, 2003.

Free Trade Zones

Under Honduran legislation, companies may register for "free trade zone" status, and benefit from the associated tax benefits, regardless of their location in the country. Companies that wish to receive free trade zone status must register with the Office of Productive Sectors in the Ministry of Industry and Commerce. As of December 2004, there are 337 companies, both Honduran and foreign, with free trade zone status operating in the country, mostly in the textile and apparel industry. There is no indication that free trade zones are being used in trade-based money laundering schemes or by the financiers of terrorism.

International Cooperation

Honduras cooperates with U.S. investigations and requests for information pursuant to the 1988 UN Drug Convention. Honduras has signed memoranda of understanding to exchange information on money laundering investigations with Panama, El Salvador, Guatemala, Mexico, Peru, Colombia, and the Dominican Republic. Honduras strives to comply with the Basel Committee's "Core Principles for Effective Banking Supervision," and the new Financial System Law (Decree No. 129-2004) passed in September 2004 is designed to improve compliance with these international standards. At the regional level, Honduras is a member of the Central American Council of Bank Superintendents, which meets periodically to exchange information.

Honduras is a party to the 1988 UN Drug Convention, the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the UN International Convention against Transnational Organized Crime, and the UN International Convention for the Suppression of the Financing of Terrorism. Honduras signed the OAS Inter-American Convention on Terrorism in June 2002, ratified the agreement on September 22, 2004, and became a party to the agreement when it deposited its instruments of ratification on November 23, 2004. Honduras signed the UN Convention Against Corruption on May 17, 2004. Honduras is a member of the Organization of American States Inter-American Drug Abuse Control Commission (OAS/CICAD) Group of Experts to Control Money Laundering and the Caribbean Financial Action Task Force (CFATF). Currently Spain and Panama are

sponsoring the Honduran UIF for membership in the Egmont Group of Financial Intelligence Units; that membership is expected to be voted upon in 2005.

No specific written agreement exists between the United States and Honduras to establish a mechanism for exchanging adequate records in connection with investigations and proceedings relating to narcotics, terrorism, terrorist financing, and other crime investigations. However, Honduras has cooperated, when requested, with appropriate law enforcement agencies of the U.S. government and other governments investigating financial crimes.

Examples of cooperation between Honduran and U.S. authorities include the prosecution of the Capitan Ryan case described above, which was aided by support from the Department of Treasury's anti-money laundering technical assistance program, and by cooperation between the INL offices at Embassy Panama and Embassy Tegucigalpa: Embassy Panama provided funding travel so that Panamanian police and prosecutors could share critical evidence with Honduran authorities.

Another example of inter-governmental cooperation concerns an ongoing investigation into the assets of drug trafficker Juan Ramon Matta Ballesteros, currently serving a prison term in the United States. In June 2004, a tip from the Spanish authorities alerted the Honduran authorities that \$550,000 was being transferred to a Honduran bank account in the name of Matta Ballesteros' wife. The Honduran authorities seized this money, but lack direct evidence that the money is connected to illegal activities, since a legal case was never brought against Matta Ballesteros in Honduras. Officials in the Honduran Public Ministry requested information from the U.S. authorities by means of an MLAT (Mutual Legal Assistance Treaty) to substantiate their claim that the money was derived from illegal activities. The Office of International Affairs in the U.S. Attorney's Office in Washington agreed to give the Honduran authorities access to the historical case files, and two Honduran officials from the Public Ministry will travel to Washington in January 2005 to examine the files, with INL funds supporting the trip.

Asset Forfeiture and Seizure Legislation

Congress first enacted an asset seizure law in 1993 that subsequent Honduran Supreme Court rulings substantially weakened. Decree No. 45-2002 strengthened the asset seizure provisions of the law, establishing an Office of Seized Assets (OABI) under the Public Ministry. The law authorizes the Office of Seized Assets to guard and administer "all goods, products or instruments" of a crime, and states that money seized (or money raised from the auctioning of seized goods) should be transferred to the public entities that participated in the investigation and prosecution of the crime. Under the Criminal Procedure Code, when goods or money are seized in any criminal investigation, a criminal charge must be submitted against the suspect within sixty days of the seizure. If one is not submitted, the suspect has the right to demand the release of the seized assets.

Decree No. 45-2002 is not entirely clear on the issue of whether a legitimate business can be seized if used to launder money which derives from criminal activities. The Chief Prosecutor for Organized Crime maintains that the authorities do have this power, since once a "legitimate" business is used to launder criminal assets, it ceases to be "legitimate" and is subject to seizure proceedings. However, this authority is not explicitly granted in the law, and there has been no test case to date which would set an interpretation. There are currently no new laws being considered regarding seizure or forfeiture of assets of criminal activity.

The total value of assets seized in 2004 was \$6.1 million, of which \$4.1 million was in cash and \$2.0 million was in goods. This marks a significant increase over 2003 figures of \$2 million in cash and \$584,000 in goods, for a total value of seized assets of \$2.6 million. Most of these seized assets are alleged to have derived from crimes related to drug trafficking; none of the seized assets are suspected of being connected to terrorist activity. The law allows for both civil and criminal forfeiture, and there are no significant legal loopholes that allow criminals to shield their assets.

However, OABI has not established firm control over the asset seizure and forfeiture process. Implementation of the existing law, and the process of equipping OABI to maintain control over seized assets and effectively dispose of them, has been slow and ineffective. The implementing regulations governing OABI were not finalized and published until more than a year after the passage of the law. Plans to build separate offices and a warehouse for this entity are still incomplete, resulting in seized assets currently being kept in various locations under dispersed authority. Money

seized is also kept in various accounts without clear records of control, or kept in cash as evidence. Due to the absence of a clear chain of custody over seized cash, the Public Ministry on one occasion in 2004 used seized cash to pay certain employees' salaries, without the money's first having passed through a proper legal process for disposition.

Similarly, assets seized, such as vehicles, property, and boats, are in many cases left unused, rather than being distributed for use by government agencies. In one case in 2004, a house seized in connection with a drug-trafficking investigation was nominally put under OABI's control, but was in fact left unguarded, and as a result was looted and severely damaged. Cases such as this one have led some police agencies, which do not have the proper assets to conduct their operations, to use these assets, again without their first having passed through a legal process for their disposition.

While these actions are contrary to proper procedures set forth in the law, OABI lacks the necessary autonomy or power to resist such actions, since OABI is itself under the Public Ministry. Furthermore, there is currently no external or independent audit of OABI's activities to guarantee transparency and proper handling of seized assets.

There is no evidence that traffickers, organized crime organizations, or terrorist organizations have taken retaliatory actions related to money laundering/terrorist financing investigations, government cooperation with the USG, or seizure/freezing of assets.

Conclusion

In 2004, the government of Honduras took positive steps to implement Decree No. 45-2002 by establishing and equipping the various government entities responsible for combating money laundering. However, there are only limited resources available for training officials, most of whom lack experience in dealing with money laundering issues. Further progress in implementing the new money laundering legislation will depend on the training and retention of personnel familiar with money laundering and financial crimes and improved ability and willingness of the Public Ministry to aggressively investigate and prosecute financial crimes. The government of Honduras should continue to support the developing government entities responsible for combating money laundering and other financial crimes, and ensure that resources are available to strengthen its anti-money laundering regime. The government should also criminalize terrorist financing, and should ensure full implementation and proper oversight of its asset forfeiture program.

Palmer